In the High Court of Judicature at Madras

Dated: 23/04/2003

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice N.V.Balasubramanian

Writ Petition No.38106 of 2002 and Writ Petition No. 38107 of 2002
and
Writ Appeals No.1702, 1927 and 2144 of 2002

Writ Petitions:

H.E.T.C. Educational Society represented by
its Director - Projects Dr.Prem C.Marthandan
No.40, GST Road, St. Thomas Mount,
Chennai 16. ..... Petitioner in W.Ps.No.
38106 & 38107 of 2002

-Vs-

1. State of Tamilnadu, represented
by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009. ..... Respondent 1 in W.P.
No.38106 of 2002 and
Respondent 2 in W.P.
No.38107 of 2002

2. The Tamilnadu Dr. M.G.R. Medical
University, No.69 Anna Salai,
Guindy, Chennai 600 032,
represented by its Registrar Respondent 2 in W.P.
No.38106 of 2002 &
Respondent 1 in W.P.
No.38107 of 2002

3. Government of India,
Ministry of Health and Family Welfare,
New Delhi, represented by its Respondent 3 in W.Ps.
Secretary to Government. No.38106 & 38107/2002

4. Dental Council of India,
represented by its Secretary,

Temple Lane, Kotla Road,
New Delhi 110 002. Respondent 4 in W.Ps.
No.38106 & 38107/2002

Writ Petition No.38106 of 2002 filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus to call the records in Lr. No.AFFLN.1(2)/4108/2001 on the file of the Tamilnadu Dr. M.G.R. Medical University and quash the order therein dated 18.09.2002 and direct the first respondent to issue Letter of Consent for affiliation to the petitioner for starting a new dental college.

Writ Petition No.38107 of 2002 filed under Article 226 of the Constitution of India for the issue of writ of certiorarified mandamus to call for the records in Letter (D) No.1486 H & FW on the file of the Health and

Family Welfare Department of State of Tamil Nadu and quash the order dated 25.09.2002 and direct the first respondent to issue Essentiality Certificate to the petitioner for starting a new Dental college.

Writ Appeal No.1702 of 2002

The Tamilnadu Dr. M.G.R. Medical
University, represented by its
Registrar, No.69 Anna Salai,
Guindy, Chennai 600 032, Appellant

vs.

1. H.E.T.C. Educational Society represented by
its Director - Projects Dr.Prem C.Marthandan
No.40, GST Road, St. Thomas Mount,
Chennai 16.

2. Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi,
represented by its Secretary.

3. Dental Council of India,
represented by its Secretary,
Temple Lane, Kotla Road,
New Delhi 110 002.

4. State of Tamilnadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

5. Director of Medical Education,
Kilpauk, Chennai 10. Respondents

Writ Appeal filed against the order in writ petition No.14216 of 200 1 made by a learned single Judge of this Court dated 12.04.2002.

Writ Appeal No.1927 of 2002

H.E.T.C. Educational Society represented by
its Director - Projects Dr.Prem C.Marthandan
No.40, GST Road, St. Thomas Mount,
Chennai 16.
Appellant

vs.

1. Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi,
represented by its Secretary.

2. Dental Council of India,
represented by its Secretary,
Temple Lane, Kotla Road,
New Delhi 110 002.

3. State of Tamilnadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

4. Director of Medical Education,
Kilpauk, Chennai 10.

5. The Tamilnadu Dr. M.G.R. Medical
University, represented by its
Registrar, No.69 Anna Salai,
Guindy, Chennai 600 032. Respondents

Writ Appeal filed against the order made in writ petition No.14216 of 2001 dated 12.04.2002 by a learned single Judge of this Court.

W.A. No.2144 of 2002

1. State of Tamilnadu,

represented by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 600 009.

2. Director of Medical Education,
Kilpauk, Chennai 10. Appellants

vs.

1. H.E.T.C. Educational Society represented by
its Director - Projects Dr.Prem C.Marthandan
No.40, GST Road, St. Thomas Mount,
Chennai 16.

2. Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi,
represented by its Secretary.

3. Dental Council of India,
represented by its Secretary,
Temple Lane, Kotla Road,
New Delhi 110 002.

4. The Tamilnadu Dr. M.G.R. Medical
University, represented by its
Registrar, No.69 Anna Salai,
Guindy, Chennai 600 032. Respondents

Writ Appeal filed against the order made in writ petition No.14216 of 2001 dated 12.04.2002 by a learned single Judge of this Court.

For H.E.T.C. : Mr. T.R.Rajagopalan,
Senior Counsel

!For Central Government : Mr.J.Madanagopala Rao,
Senior Central Government
Standing Counsel

^For Dental Council of India : Mr.Perumbulavil Radhakrishnan

For State of Tamil Nadu and
For Director of Medical
Education : Mr.R.Muthukumarasamy,
Additional Advocate General,
assisted by Mr.V.R.Rajasekaran
Special Government Pleader

For M.G.R. University : Mr.M.Vellaichamy

:JUDGMENT

R.Jayasimha Babu, J.

Hindustan Engineering Training Centre (HETC) Educational Society is registered under the Societies Registration Act, 1860 and runs six educational institutions. The object of the society is to impart higher education in medical, dental, engineering and other subjects. In the year 1997 it resolved to start a new dental college in the name of Hindustan Institute of Dental Science at Karapakkam, in Kancheepuram District near Chennai.

2. On 07.02.2001 it applied to the Government of India under Section 10-A which was introduced with effect from 27th August 1992 into the Dentists Act, 1948 by Act 30 of 1993, and in accordance with the Establishment of New Dental Colleges Regulations, framed by the Dental Council in exercise of it's powers under Section 10-A read with 20 of the Dentists Act. That proposal was returned to the petitioner on the 23rd of February, 2001 pointing out certain deficiencies and after some of those deficiencies were removed, the proposal was again returned on 15th June 2001, inter alia, on the ground that the Essentiality Certificate from the State Government and letter of affiliation from the University have not been furnished. The petitioner society's request for issue of Essentiality Certificate was rejected by the State Government on 25.09.2002. It's request for affiliation was also rejected by the Dr. MGR Medical University on 18.09.2002. Those two orders have been impugned by the petitioner in writ petitions No.3 8106 and 38107 of 2002.

3. The petitioner had earlier filed writ petition No.14216 of 2001 for a direction to the Government of India to quash the letter of the Government of India dated 15.06.2001 and to issue a direction to the Government to consider it's application to start a new dental college without insisting upon the Essentiality Certificate and letter of affiliation. The learned single Judge while rejecting the challenge to the order of the Government of India dated 15.06.2001, directed the State Government to consider the request of the petitioner for issuance of Essentiality Certificate and to issue the certificate within a month. University was also directed to issue letter of affiliation within a period of one month. That order of the learned single Judge dated 12.04.2002 is the subject matter of appeals filed by the State, the University and the Petitioner in Writ Appeals No.1702, 1927 and 2144 of 2002.

4. During the pendency of these appeals, the two orders impugned in the two writ petitions No.38106 and 38107 of 2002 came to be made.

5. Learned counsel for the parties submitted that having regard to the order made by the State Government on 18.09.2002 and by the University on 25.09.2002 the writ appeals have become infructuous. The writ appeals are dismissed as having become infructuous.

6. The State Government in it's order dated 25.09.2002 rejected the request for issue of Essentiality Certificate on the ground that the hospital

with which the proposed college is to have a tie-up is 12 kms away and thus it is beyond the distance of 10 kms specified in the Regulations framed under section 10-A of the Dentists Act, and further that various facilities like library, laboratory, staff accommodation, and staff in required numbers had not been provided in accordance with the requirement of the Regulations framed by the Dental Council. The failure to furnish the bank guarantee before the Government of India was also cited as a reason.

7. The State Government, in the additional counter affidavit filed by it's Additional Secretary to Government, Health and Family Welfare Department, has stated that there are already seven private dental colleges functioning in Kancheepuram and adjacent Thiruvallur Districts, which two districts adjoin the city of Chennai, and that in the city of Chennai the Government is running a dental college, that the location of the petitioner's college though in a semi urban area, is very close to the Chennai city and could not be construed as rural/ backward area having regard to the functioning of eight dental colleges in and around Chennai. It is also stated in that affidavit that the Government have taken a "general policy decision to consider only the applications of the Private Trusts which propose to start the Dental/Medical College in a Rural/backward area of the State which is not having required Medical/Dental College Hospital to cater their needs."

8. Dr. MGR Medical University to which the college proposed to be started by the petitioner has to be affiliated, rejected the petitioner's request for affiliation by it's letter dated 18.09.2002 on the grounds that the approval of the Chennai Metropolitan Development Authority had not been obtained for the building plan for the proposed dental college and hospital though such approval is mandatory; that there are no residential quarters for the staff members; that the Malar Hospital which had been shown by the petitioner as the tie-up hospital is beyond 10 kms limit prescribed in the Dental Council Regulations; that full-fledged teaching staff were not available in certain departments, and that there was short fall of eight lecturers.

9. Shri Rajagopalan, learned senior counsel for the petitioner submitted that the State as also the University have misconceived their role in the scheme governing establishment of new dental colleges under the Dentists Act, have usurped the function of the Dental Council, and of the Central Government, that they have declined the certificates sought on irrelevant grounds, and therefore their orders are unsustainable. He also pointed out that there were more than one hundred and twenty engineering colleges in and around the city of Chennai while the number of Dental Colleges in the area comprised in the city of Chennai and the adjoining districts of Kancheepuram and Thiruvalluvar was only seven,

10. Mr. Muthukumarasamy, the learned Additional Advocate General who appeared for the State submitted that the certification by the State that the establishment of new dental college is essential is mandatory, that the reasons given by the State for refusing to grant the certificate are within the scope of it's authority and that the reasons given are relevant. Besides

the reasons given in the impugned order, and the further reason given in the Additional Affidavit, violation of the land ceiling laws by the petitioner in holding more land than is permissible under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 without obtaining an order of exemption from the State Government, was also put forth as a justification for not granting the essentiality certificate. That the petitioner holds lands in excess of the ceiling limit without obtaining an order of exemption was not disputed by the counsel for the petitioners.

11. Shri Vellaichamy, learned counsel appearing for the University submitted that the statutes framed by the University relating to the affiliation of Dental Colleges is now in conformity with what has been laid down in the Regulations framed by the Dental Council, and that the refusal to grant of letter of consent for affiliation being based on statutes which are in para materia with the Regulations, is in accordance with law. He also submitted that the University is an independent body and the grant of affiliation is a matter which is within exclusive province of the University and is not a matter which can be decided for it by the Government of India.

12. After the decision of the Supreme Court in the case of State of Tamil Nadu vs. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104, the law laid down in that decision having been reiterated in the case of Jaya Gokul Educational Trust vs. Secretary to Government Higher Education Department, (2000) 5 SCC 221, it is now settled law that in the matter of grant of permission for establishing new colleges for the disciplines which are governed by All India Council of Technical Education Act, Indian Medical Council Act and Dentists Act, those central statutes occupy the field as those Central laws are relatable to Entry 66 of List I and Entry 25 of List II. The permission of the State Government independent of the Central enactment is therefore no longer necessary.

13. The role of the State Government, after the amendments effected to these enactments in the year 1993 vis-a-vis establishment of and enhancement of capacity of the institutions in the disciplines covered by these Acts, is now not a primary role, but a subsidiary and derivative one confined to the consideration of desirability of establishing and assessment of the feasibility at the location chosen by the institution. That role has been assigned to the States/Union territories in the Rules/Regulations framed by the respective Councils under those enactments.

14. Section 10-A of the Dentists Act deals with the permission for establishment of new dental colleges, new courses of study, etc. The process begins with the submission of a scheme by those eligible, to the Central Government, containing the prescribed particulars and accompanied by the prescribed fees, and permissions/certificates . The Dental Council is required to consider the scheme with due regard to the factors set out in Section 10-A(7)(a) to (g). Those factors are:

(a) whether the proposed authority or institution for grant of recognised dental qualification or the existing authority or institution

seeking to open a new or higher course of study or training would be in a position to offer the minimum standards of dental education in conformity with the requirements referred to in Section 16A and the regulations made under sub-section (1) of Section 20;
(b) whether the person seeking to establish an authority or institution or the existing authority or institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate resources;
(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the authority or institution or conducting the new course of study or training, or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such authority or institution or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme.
(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such authority or institution or course of study or training by person having the recognised dental qualification;
(f) the requirement of manpower in the field of practice of dentistry; and
(g) any other factors may be prescribed.
Location of the Institution - whether in a Rural or Urban area, or in Developed or Backward or Hilly area or in an area which has no dental colleges or prescribed minimum or maximum number of such colleges, is not one of the prescribed factors with reference to which the Dental Council is required to consider the application.

15. The Dental Council constituted under the Dentists Act, has framed the 'Establishment of New Dental College Regulations, 1993'. The form of application prescribed under those Regulations sets out the eligibility criteria, qualifying criteria, forms and procedures, submission of application/scheme and application fee, evaluation by the Dental Council of India, and grant of permission.

16. It is only the University and the State Government/Union Territory, Autonomous Bodies promoted by the Central and State Governments, Societies registered under the Societies Registration Act, and public trusts and religious and charitable trusts registered under the Indian Trusts Act, 1882, Wakf Act, etc., that are eligible to submit the scheme.

17. Among the qualifying criteria that are prescribed, those listed at serial numbers 2, 3, 4 and 9 of that Form are relevant for the present purpose. They are:

" 2. That a minimum of 5 acres of land and with constructed area as shown below is owned and possessed by the applicant to set up the proposed

Dental College

Admission 1st Year 4th Year

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40 16,000 sq.ft 40,000 sq.ft
60 24,000 sq.ft 60,000 sq.ft
100 40,000 sq.ft 100,000 sq.ft

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3. That permission/essentiality certificate regarding the desirability and feasibility of having the proposed Dental College at the proposed location has been obtained by the applicant from the respective State Government or the Union Territory Administration.
4. That permission/letter of University's Affiliation for the proposed Dental College has been obtained by the applicant from a recognised University and that adequate clinical material is available for fulfilling the requirements of the syllabus and regulations laid down by the Dental Council of India.
.....
9. That the applicant shall locate the proposed college in proximity of a Medical College and shall get an undertaking of the said Medical College to the effect that the said Medical College shall facilitate training to the students of the proposed Dental College in the subjects of Medicine, Surgery and Allied Medical Sciences.
Where no Medical College is available in the proximity of the proposed Dental College, the proposed Dental College shall get itself tied up with a General Hospital which is having provision for atleast 100 beds and which is located within 10 k.m. Radius of the proposed Dental College. It shall be the duty of the applicant to produce evidence that the infrastructural facilities such as teaching, preclinical, para-clinical and allied medical sciences are owned by the proposed Dental College itself. "

18. The application is required to be submitted by the applicant in two parts: "Part I of the application (Annexure I) will contain the following particulars about the applicant and information regarding the desirability and prima facie feasibility of setting up of dental college:
(1)Information regarding the constitution of applicant's organisation within the terms of reference of the eligibility criteria.
(2) Information regarding basic infrastructural facilities and managerial and financial capabilities of the applicant, and
(3) Information regarding availability of necessary certificate, permission letters as prescribed in the Qualifying Criteria."

19. Annexure I to the application requires the applicant to enclose to that application nine documents. They are : --(1) Certified copy of Bye-laws/Memorandum and Articles of Association/Trust Deed etc., (2) Certified

copy of Certificates of Registration/ Incorporation, (3) Annual Reports and Audited Balance Sheets for the last three years, (4) Certified copy of the Title Deeds of the total available land as a proof of ownership, (5) Certified copy of the Zonal Plans of the available sites indicating their land use, (6) Proof of attachment with Medical College Hospital or 100 beded General Hospital, (7) Certified copy of the essential certificate by the respective State Government/Union Territory Administration, (8) Certified copy of the letter of Affiliation issued by a recognised University, and (9) Authorisation letter addressed to the Bankers of the Applicant authorising the Central Government/Dental Council of India to make independent enquiries regarding the financial track record of the applicant.

20. Thus under the Scheme framed by the Dental Council the State Government is involved at the very inception, by making the State Government's certificate an essential accompaniment to the application. That position no doubt can be easily altered by deleting the requirement for such a certificate in the Regulations. The Central Government and the Dental Council, as the Regulations now stand, seek to be guided by State Government/Union Territory's assessment of the desirability and feasibility of establishing the new institution at the proposed location.

21. The Dental Council has not prescribed any guidelines to guide the State Governments while considering the application for grant of Essentiality Certificate. The only guidance available in the Regulation, regarding suitability of the location is the requirement that it be 'in proximity' of a medical college or be within 10 kms from a General Hospital with atleast 100 beds, and with which it has a tie up. In the absence of any other guideline in the Regulations, the State/Union Territory has to choose for itself criteria which are consistent with the aims and objects as also provisions of the Dentists Act, Rules and Regulations made thereunder for determining the desirability and feasibility. The criteria chosen should be uniform, non arbitrary, should be relevant, and should be reasonable.

22. The certificate to be issued by the State is with regard to location - the desirability of establishing the institution at that location, and the feasibility thereof. The location chosen by the applicant may be found to be desirable but the establishment of the institution at that location may not be feasible, and vice versa. Desirability and feasibility should coincide in relation to the chosen location.

23. Though the term 'desirable' would appear to open itself to subjective considerations, a decision thereon cannot be left to the caprice and whim of the State Government. The desirability or otherwise should be based on objective criteria. It would be open to the State Government to prepare a perspective plan for it's own guidance for selecting locations for the proposed new colleges. Such a plan however cannot shut out consideration of the location proposed by an applicant, as the final decision to grant or not grant permission to establish the college is that of the Central Government.

24. The immediate surroundings of the proposed location such as the

location being in an unhygenic slum, or being close to a dumping yard, or to a large quarry, or an open prison, or to factories or Distilleries, would be relevant for adjudging desirability. Information regarding the surrounding is more likely to be, and more easily available with the State Government. For ascertaining these factors the State Government should normally have the proposed location and it's surroundings inspected.

25. The feasibility would involve enquiry into such factors as the permissibility of the user of the land for putting up the dental college at that location. If the location chosen is Government land, the Government cannot be expected to permit a third party to trespass on to it's land and put up a dental college thereon. So also if the permissible user under the Zonal Regulations does not allow the use of the land at the proposed location for the purpose of putting up a dental college, it would be open to the State Government to decline to grant the certificate. If the applicant holds the land in excess of what is permissible in law and that excess is liable to be taken over by the State, and the proposed location is in such excess land, that is also a relevant factor while considering the feasibility. If the construction proposed, under the relevant building regulations, is not permissible by reason of non conformity with the Regulations relating to Flow Space Index, set backs, provision for fire escape, etc., it would be open to the State to decline to grant the certificate.

26. While considering the desirability and feasibility, it is certainly open to the State Government to consider the legality with reference to other applicable laws.

27. In this case, most of the reasons given by the State Government in the impugned order for rejecting the petitioner's request cannot be said to be relevant. The State is not required to decide as to whether the staff employed, the facilities to be provided etc., are in conformity with the Regulations. Those are matters for appraisal by the Dental Council and the Central Government. The distance between the proposed location and the Malar Hospital with which the proposed institution is to have a tie up however is relevant. That distance is said to be more than 10 kms. That fact is disputed by the petitioner. On this aspect the petitioner had not been heard by the State Government. It is but fair that petitioner be allowed to place material before the State Government to substantiate it's stand. The verification of the distance by the route suggested by the petitioner can then be carried out.

28. In the additional affidavit filed by the Additional Secretary to Government, additional reasons are sought to be given that the proposed location is just outside the limits of the city of Chennai and that in this district and the neigbouring districts there are seven other private dental colleges, and therefore the establishment of one more dental college in this location is undesirable. That factor cannot be regarded as sufficient justification for refusing the certificate, as admittedly other professional colleges such as engineering colleges numbering more than 120 are located in and around the city of Chennai. Moreover, as a Dental College must

necessarily be located near a Medical College or a General Hospital with atleast 100 beds, locating the proposed college on the outskirts of Chennai city within the permitted distance from a General Hospital cannot be said to be wrong, impermissible or inequitable.

29. Learned senior counsel for the State submitted at the Bar that the extent of lands held by the petitioner is in excess of the ceiling limits and that the petitioner has not obtained the permission of the State for holding such excess land. It was also pointed out that the petitioner has not obtained the approval of Chennai Metropolitan Development Authority for the plans for the buildings put up by it for this college. Though those reasons may be germane they are not the reasons given in the impugned order.

30. So far as the affiliation to the University is concerned, it is the case of the University that it's Regulations governing affiliation to dental colleges, are now in para materia with the Regulations prescribed by Dental Council with regard to the establishment of new dental colleges. The Dental Council will make an appraisal of the scheme submitted by the applicant. Appraisal so made is not required to be duplicated by the University even at the initial stage. The scheme framed by the Dental Council only requires the letter of consent from the University. University is not required to grant affiliation even before the college is established. It is sufficient for the University now to state that it would consent to grant affiliation after the college is established in accordance with the terms of the permission granted by the Central Government, subject to it's conforming to the Regulations prescribed by the University. Even under the University's Regulations, only provisional affiliation is to be granted after the college is established, and that affiliation is required to be renewed each year subject to the institution fulfilling the criteria prescribed by it. Regular affiliation is to be given only when the first batch of students complete the entire course and all the facilities required to be established in terms of the Regulations, have been established by the concerned institution.

31. The affiliation to the University is essential as the students passing out of the college in order to practice their profession, should have their degrees recognised by an established University in the country as also by the Dental Council. While the institution concerned or the Dental Council cannot compel the University to grant affiliation, the University for it's part cannot arbitrarily with-hold it's consent for consideration of affiliation even in cases where the college is to be established in conformity with the Regulations prescribed by it.

32. The grant of provisional affiliation will have to be considered by the University after the Central Government grants permission, and before deciding on that, it would be open to the University to inspect all facilities and ensure that the requirements under those Regulations have in fact been provided. Universities must recognise that there is no scope for the University regarding the Dental Council or the Government of India as being a competing or rival centre of power. While Universities are expected to maintain high standards and aim at achieving excellence, in the matter of education for the professions which are subject to the Regulations under the

legislation enacted by the Parliament, the quality of the professional education is overseen by the bodies designated under the Parliamentary statutes. The certification given by such bodies are to be respected by the Universities. That is the reason why the University has amended it's Regulations to bring them in conformity with what has been prescribed by the Dental Council in the matter of recognition of new Dental college. This is as it should be.

33. By the impugned order, the University has declined to grant the letter sought on the ground that all the facilities which are required to be established under the Regulations framed by the Dental Council have not been established. The University has misconceived it' s role. It is not required of the applicant that it provide every facility required under the Regulations at one stroke. Under the Regulations framed by the Dental council that is required to be done at stages. That is the reason why recognition by the Central Government, as also provisional affiliation that the University may grant, are to be renewed each year till the first batch of students complete the course.

34. It is for the Dental Council to evaluate the facilities established by the petitioner and to decide as to whether the facilities so provided are adequate for opening the college and commencing the first year course. The admission can only be after the University grants provisional affiliation. The appraisal by the University is to be made after the permission is granted by Central Government and before granting provisional affiliation.

35. The University at this stage is only required to consider broadly as to whether it has jurisdiction over the area in which the college is to come up, whether the applicant who proposes to establish a college had come to any serious adverse notice and was guilty of acts of omission and commission which make it undesirable to allow the applicant to start a new institution within the jurisdiction of the University, and such similar factors.

36. In the impugned order one other reason given is that CMDA has not approved the building plan. The consent for considering affiliation can be given subject to the institution obtaining such approval so that the consideration of the scheme need not be indefinitely delayed.

37. A three Judge Bench of the Supreme Court in the case of St. Joseph's Teachers Training Institute vs. Regional Director, National council for Teachers Education, Civil Appeal No.1068 of 2003 decided on 07.02.2003 rejected a challenge to Regulation 5(e) and (f) which make it mandatory for an applicant seeking permission from the National Council for Teachers Education to obtain a No Objection Certificate from the State Government. The Court held that the prescription of such a requirement did not amount to excessive delegation or abdication of the Council's power to the State Government. It

was held that such a certificate from the State Government would facilitate the work of the Council. It was further held that the grant or refusal of No Objection Certificate is not conclusive or binding on the Council.

38. In Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N., (1996) 3 SCC 15, the Supreme Court held that the refusal on the part of the State Government to grant the essentiality certificate to start a medical college on the ground that the Government had a "policy of not permitting any private trust or management to start a medical/dental college" could not be upheld as the State Government had no power to refuse the certificate on such a policy consideration. The Court also held that for the purpose of granting of certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location.

39. In the case of State of Tamil Nadu vs. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104, the Court held that when a Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III the provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative, but the conditions prescribed by the University will have to be in conformity with the norms and guidelines prescribed under the Central Act.

40. State of Maharashtra vs. Indian Medical Association, (2002) 1 SCC 589, as stated by the Court in paragraph 18(I) of the judgment is a decision "....confined to the question of establishing a Government-run medical colleges in the State". It was observed in that judgment that the State's certificate regarding location "is mandatory", that "the State Government is the only authority under the Regulations with which we are concerned to decide the location of the new proposed medical college within the State. The State Government therefore is the only judge to decide where the proposed medical college is to be located", and that " the State Government in order to maintain inter and intra regional balances within the State and to remove the chances of the arbitrariness can lay down guidelines or prepare a perspective plan for it's own guidance for selecting locations for the proposed new medical college within the State." In that case, the perspective plan prepared by the University was held to be not binding on the State government when it resolved to set up a new medical government college.

41. A Full Bench of the Andhra Pradesh High Court in the case of Government of Andhra Pradesh vs. Medwin Educational Society, AIR 2001 AP 148 held that the Constitution does not empower the State Government to with-hold Essentiality Certificate on policy considerations with regard to location, that it's views with regard to desirability and feasibility are not binding on the Central Government, and that Government of India cannot 'abdicate' the power and jurisdiction in favour of the State Government by treating the State's decision with regard to choice of location as final.

42. Government of States/Union Territories must reconcile themselves to the fact that professional education in the fields of Dentistry, Medicine and Engineering being covered by the Dentists Act, Indian Medical Council Act and AICTE Act, their role is a very limited one. While considering the

application for grant of certificate regarding desirability and feasibility of the location, their approach should not be a negative one of seeking to find some reason or other to reject the request.

43. The State Governments, who for want of resources are unable to establish new professional colleges or increase capacity in existing ones, should not, by forming any preconceived notions come in the way of new institution being established by those who do not seek Government funding and are eligible to establish new institutions under the qualifying criteria prescribed by the Professional bodies under those enactments, and are able to satisfy the other criteria prescribed by the Dental or Medical Council.

44. They should also remind themselves of the fact that the right to establish and run educational institution is a fundamental right as held by the Eleven Judge Bench of the Supreme Court in the case of T.M.A. Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481. The exercise of such a right is not to be obstructed except on permissible legitimate grounds and in the public interest.

45. The decision of the State Government in those matters and the reasons therefor while constituting relevant material, need not be regarded as final by the Central Government, as the final decision to grant or not to grant permission to establish the institution, has to be made by the Central Government. That power of the Central Government cannot be exercised by the State Government at the very threshold by treating the State's refusal to grant the certificate regarding desirability and feasibility as final and as precluding any further consideration of the application by the Central Government. It will of course be open to the Central Government to agree with the reasons given by the State Government, and decline to grant permission. But before doing so the Central Government should apply it's mind to the reasons given by the State Government.

46. It is desirable that the Dental Council/Central Government provide adequate guidelines to the States with regard to the factors to be considered while deciding on desirability or feasibility of establishing the institution at the proposed location, as in the Regulations framed by the Dental Council, the factors to be considered have not been spelt out. Prescription of the relevant factors in the Regulations will ensure that a uniform yardstick is applied by all State Governments and Union Territories, and will also afford proper guidance to those who have to decide on the application for approval of the location.

47. Though the form of application prescribed by the Dental Council refers to letter of affiliation, having regard to the fact that the letter is to accompany an application for establishing an institution even before the institution is established the letter to be given by the University can only be a letter consenting to grant affiliation in future, subject to the University's Regulations concerning affiliation being complied with. The University shall issue such a letter within a period of four weeks from today. The order of the University dated 18.09.2002 declining to grant the letter of affiliation is set aside.

48. The State Government's order dated 25.09.2002 declining to grant the certificate is set aside with a direction to consider the matter afresh in the light of this judgment and in accordance with law and make an appropriate order within four weeks.

Index : Yes
Website : Yes

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